UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SMARTE JACK, INC. Plaintiff, v. **BEACH KING, INC.** and **DAN SCHULTZ** and **BOATS, INC. dba J&K MARINE** Defendants.	Civil Action No. ____________________ **COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT AND DECEPTIVE TRADE PRACTICES** (JURY TRIAL DEMANDED)

COMPLAINT

Plaintiff, Smarte Jack, Inc. ("Smarte Jack") files this complaint against Defendants Beach King, Inc. ("Beach King"), Dan Schultz ("Schultz") and Boats, Inc., dba J&K Marine ("Boats") and states and alleges as follows:

THE PARTIES

1. Plaintiff Smarte Jack is a Minnesota corporation with a principal place of business located at 30211 Herberg Road, Shafer, Minnesota 55074.

2. On information and belief, Defendant Beach King is a Minnesota corporation with a principal place of business at 30000 US Highway 10, Frazee, Minnesota 56544.

3. On information and belief, Defendant Schultz is an individual having an address at 35412 Adams Point Road, Frazee, Minnesota 56544. Defendant Schultz is the owner, Chief Executive Office, and president of the privately owned Beach King.

4. On information and belief, Defendant Boats is a Minnesota corporation having a principal place of business at 24147 Wine Lake Road, Detroit Lakes, Minnesota 56501 and doing business as J&K Marine, a Minnesota assumed name.

JURISDICTION, VENUE AND JOINDER

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action for infringement of a United States patent arises under the Patent Laws of the United States, 35 U.S.C. §§ 271 and 281-285.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1338(a) because this action for infringement of a federal trademark registration and use of a mark in commerce arises under the federal trademark statute (the "Lanham Act").

7. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1338(b) and § 1367(a) because this action for deceptive trade practices and unfair competition arises under the Minnesota Deceptive Trade Practices Act (the "DTPA"), Minn. Stat. § 325D.44 and is joined with a substantial and related claim under federal patent and trademark laws.

8. This Court has personal jurisdiction over Defendant Beach King for at least the reasons that Beach King is registered to transact business in Minnesota, does transact business in Minnesota, has purposefully availed itself of the privileges of doing business in Minnesota, and has committed acts of patent infringement in Minnesota as alleged in this Complaint.

9. This Court has personal jurisdiction over Defendant Schultz for at least the reasons that Schultz is a resident of Minnesota, is the owner, Chief Executive Office and President of Beach King and transacts business in Minnesota and has committed and/or induced acts of patent infringement in Minnesota as alleged in this Complaint.

10. This Court has personal jurisdiction over Defendant Boats for at least the reasons that Boats is registered to transact business in Minnesota, does transact business in Minnesota, has purposefully availed itself of the privileges of doing business in Minnesota, and has committed acts of patent and trademark infringement, deceptive trade practices, and unfair competition in Minnesota as alleged in this Complaint.

11. Defendants Beach King, Schultz, and Boats have committed and continue to commit acts of patent infringement, including selling and offering to sell an infringing product and contributorily infringing and inducing infringement in Minnesota and this judicial district.

12. Defendant Boats deceptive trade practices result from transacting business in Minnesota and this judicial district. On information and belief, Defendant has at least one location for offering for sale and selling the accused product and process located in Minnesota.

13. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Defendants Beach King, Schultz, and Boats have committed and continue to commit acts of infringement in Minnesota by making, using, importing, offering for sale, and/or selling infringing products and processes, and/or

inducing others to make, use, sell, or offer for sale infringing products and processes in Minnesota.

14. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, on information and belief, Defendants Beach King, Schultz, and Boats transact and have transacted business through the state of Minnesota, and have committed tortious acts within the State of Minnesota, causing injury to Smarte Jack in the State of Minnesota. Defendants Beach King, Schultz and Boats have established places of business in this judicial district and are Defendants over which the Court has personal jurisdiction.

15. Joinder is proper under 35 U.S.C. § 299 because Defendants Beach King and Boats have a manufacturer/distributor and/or distributor/retailer relationship, and have acted in concert with one another. The allegations of infringement contained herein arise out of the same series of occurrences relating to the manufacture, use, import, sale and/or offering for sale of the same accused products and processes.

16. Joinder is proper under 35 U.S.C. § 299 because upon information and belief, Defendant Schultz is the owner, Chief Executive Officer, and president of the privately owned Defendant Beach King. Defendants have an involved owner/officer-business relationship and have acted in concert with one another. The allegations of infringement contained herein arise out of the same series of occurrences relating to the manufacture, use, import, sale and/or offering for sale of the same accused products and processes.

FACTUAL BACKGROUND

17. Smarte Jack sells the industry leading SMARTE JACK® retractable wheel jack for underwater uses, such as for boat lifts.

18. Generally, a boat lift is a structure for storing boats or personal watercraft out of the water. The boat lift itself is in the water and includes a mechanism to lift the boat above the water line. The boat is generally floated over the mechanism, within the confines of the boat lift structure. The boat is typically lifted by a movable cradle that can be raised to lift the watercraft into a storage position out of water contact. Conversely, this mechanism can lower the watercraft onto the water until the watercraft freely floats on the water. The cradle of the boat lift may be powered either manually or by motor.

19. In northern locales, where the body of water freezes during the winter, boat lifts are generally freestanding structures that can be taken out of the water. If the boat lift is not taken out of the water, it may be subjected to the movement of ice during spring thaw, which may result in irreparable damage to the boat lift. Therefore, before the water freezes, the boat lift is removed from the water. In the spring, once the ice melts, the boat lift is then put back into the water. Installing, leveling and removing a boat lift can be a difficult operation.

20. Smarte Jack's SMARTE JACK® product can be secured to an existing boat lift such that the boat lift is movable both on land and in water. The wheels of the product are adjustable and can be extended or retracted sufficiently so that the boat lift or other structure engages the ground and/or cannot be moved by the current, wind, inertia or other environmental forces. The SMARTE JACK® product includes a first mechanism for

attaching the retractable wheel assembly to a boat lift and a second mechanism for positioning, via extension or retraction, the wheel axle so that the boat lift thereby engages the ground.

21. Mark Ebbenga, Dana Hallberg, and Dan Coates are the inventors of United States Patent No. 8,596,906 entitled "Retractable Wheel for Boat Lift and Other Structures" ("the '906 patent"). The '906 patent was issued by the United States Patent and Trademark Office on December 3, 2013 from United States Patent Application No. Serial 12/682,663. A true and correct copy of the '906 patent is attached as Exhibit A.

22. The inventions of the '906 patent relate to a retractable wheel and the use of the retractable wheel with a boat lift.

23. Smarte Jack sells at least one good embodying the inventions of the '906 patent, including the SMARTE JACK® product which is and has been properly marked with the '906 patent number pursuant to 35 U.S.C. § 287.

24. Smarte Jack is and has been at all relevant times the owner by assignment of the '906 patent.

25. Smarte Jack has been continuously using its SMARTE JACK® mark in commerce in the United States since at least January 25, 2009 in connection with hand-operated jacks for underwater use, which include products embodying the inventions of the '906 patent.

26. Smarte Jack is the owner of United States Trademark Registration No. 3,988,403 for SMARTE JACK ("the '403 registration"), which registered on the principal register with the United States Patent and Trademark Office ("USPTO") for "hand-

operated jacks for underwater use" on July 5, 2011. A true and correct copy of the '403 registration is attached as Exhibit B.

27. Smarte Jack is and has been at all relevant times the owner of the '403 registration.

COUNT I – PATENT INFRINGEMENT U.S. PATENT NO. 9,045,018

28. Smarte Jack repeats and realleges all allegations set forth above in paragraphs 1-28 as if they were stated in full and incorporated herein.

29. Smarte Jack owns and holds all legal title, interest, and rights in the '906 patent.

30. Defendant Boats did have the authority to offer to sell and/or sell official SMARTE JACK® products and processes.

31. Defendant Boats did not and does not have authority or permission to make, use, offer to sell, sell, or import into the United States the accused products and processes which incorporate the subject matter claimed in the '906 patent.

32. Defendants Beach King and Schultz did not and do not have authority or permission to make, use, offer to sell, sell, or import into the United States the accused products and processes which incorporate the subject matter claimed in the '906 patent.

33. Defendants have had actual knowledge of the '906 patent at least by the time of the filing and service of the Complaint in this action.

34. Upon information and belief, Defendants Beach King and Schultz have had actual knowledge of the '906 patent at least by the time of the filing and service of the Complaint in this action as Smarte Jack provided written notice of the '906 patent to

Defendants Beach King and Schultz on January 31, 2014. Defendants Beach King and Schultz previously indicated in response that they would not the sell the infringing product or process and that while there was no inventory for the product they would not take any orders for the product. A copy of the notice provided to Defendants Beach King and Schultz and associated correspondence including Defendants Beach King's and Schultz's response thereto, is attached hereto as Exhibit C.

35. In violation of 35 U.S.C. § 271, on information and belief, Defendants have directly and/or indirectly infringed and continue to infringe one or more claims, including at least claim 10, of the '906 patent, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling an infringing product in the United States, and/or importing an infringing product into the United States.

36. On information and belief, infringing products made, used, offered for sale, sold, and/or imported into the United States by Defendants include, but are not limited to, the accused products and processes referred to by Defendants as DANS WHL JACK, WHEEL JACKS ONE PAIR W, and any same or similar products as those referred to on these respective purchase receipts for Defendants' devices (collectively referred to herein as the "accused product(s) and process"):

J&K MARINE (BOATS INC.)
24147 WINE LAKE RD
DETROIT LAKES, MN
US
56501
218-847-0324

01:46pm FRI 23 SEP 16
INVOICE# 005832 CODE# HHH
CUSTOMER 999 - MISC CASH CUSTOMER
****
1.00 BKWJ 445.00 445.00
- DANS WHL JACK

Subtotal: 445.00
Tax: 32.82
Total: 477.82
****
Payments: MASTERCARD 477.82

J&K MARINE (BOATS INC.)
24147 WINE LAKE RD
DETROIT LAKES, MN
US
56501
218-847-0324

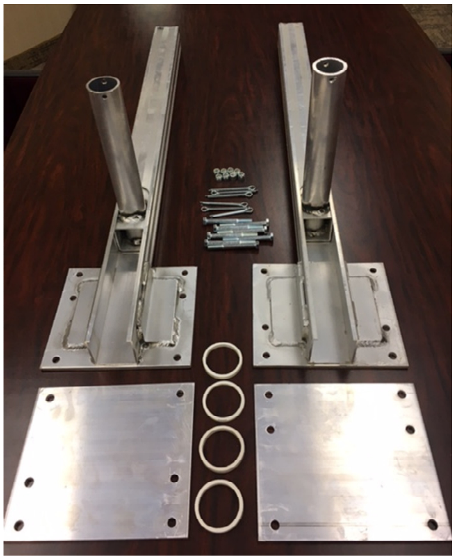
12:10pm WED 19 APR 17
INVOICE# 015833 CODE# HHH
CUSTOMER 999 - MISC CASH CUSTOMER
****
1.00 BK.1031 500.00 500.00
- WHEEL JACKS ONE PAIR W

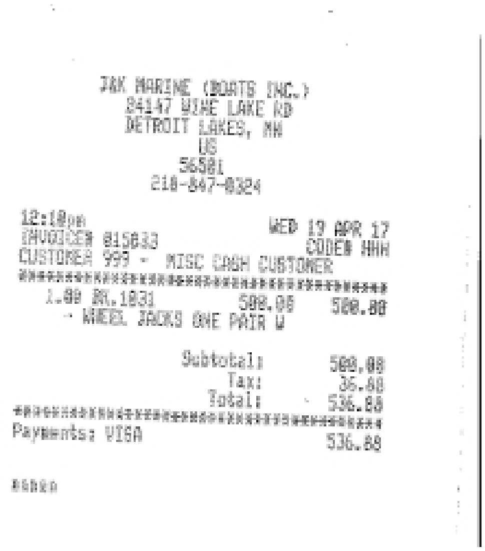
Subtotal: 500.00
Tax: 36.88
Total: 536.88
****
Payments: VISA 536.88

37. As recited in claim 10 of the ’906 patent, on information and belief, the accused product, when installed, is used to level a boat and includes placing a socket tool onto a head of a first threaded rod; rotating the head of the first threaded rod in a substantially horizontal plane with the tool to thereby cause substantially vertical movement of a first portion of the boat lift; placing the socket tool onto a head of a second threaded rod; and rotating the head of the second threaded rod in a substantially horizontal plane with the tool to thereby cause substantially vertical movement of a second portion of the boat lift; each threaded rod being attached to a wheel assembly of the lift; thereby causing substantially vertical movements of the first and second portions of the boat lift until the boat lift is horizontally level; and retracting the wheel assemblies upwardly.

38. On information and belief, the accused product and process is made, offered for sale and sold as a pair as illustrated below, and as noted in the corresponding purchase

receipts for the accused product pictured below and as actually purchased from Defendant Boats.




J&K MARINE (BOATS INC.)
24147 WINE LAKE RD
DETROIT LAKES, MN
US
56501
218-847-0324

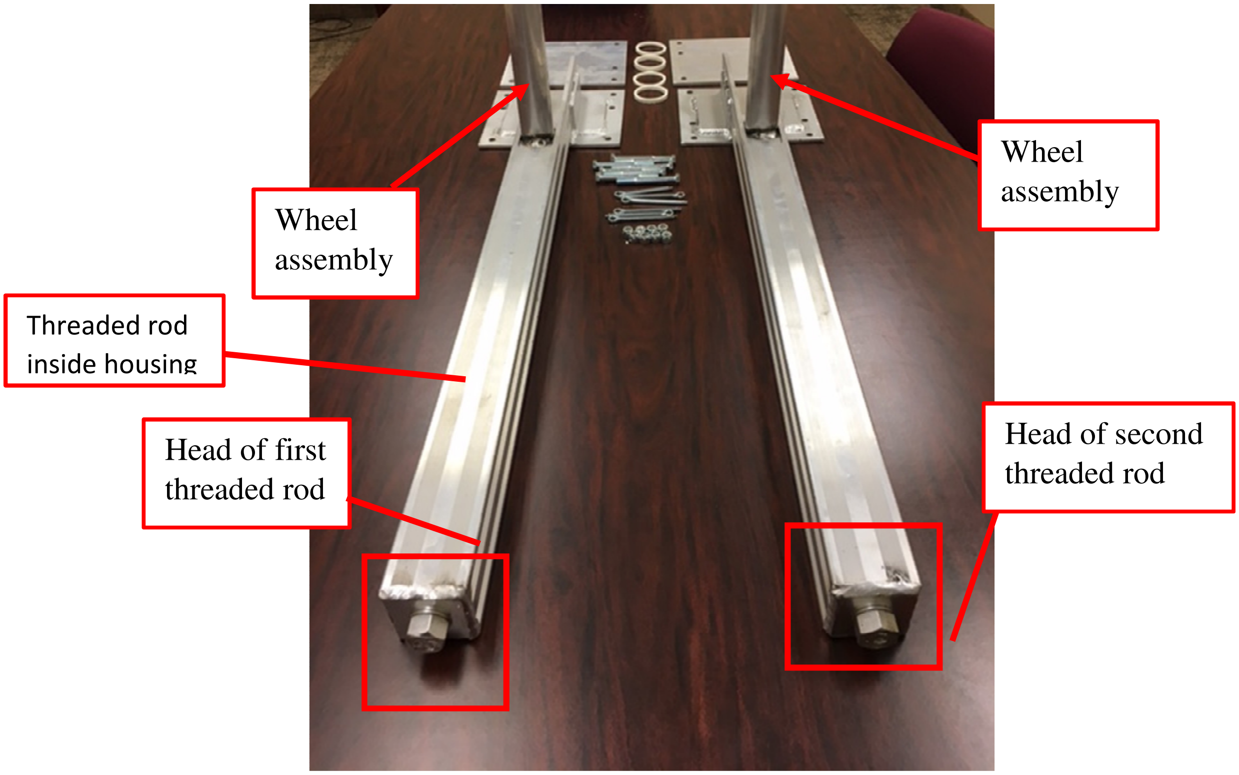
12:10pm WED 19 APR 17
INVOICE# 015033 CODE# HHH
CUSTOMER 999 - MISC CASH CUSTOMER
****
1.00 BK.1031 500.00 500.00
- WHEEL JACKS ONE PAIR W

Subtotal: 500.00
Tax: 36.00
Total: 536.00
****
Payments: VISA 536.00

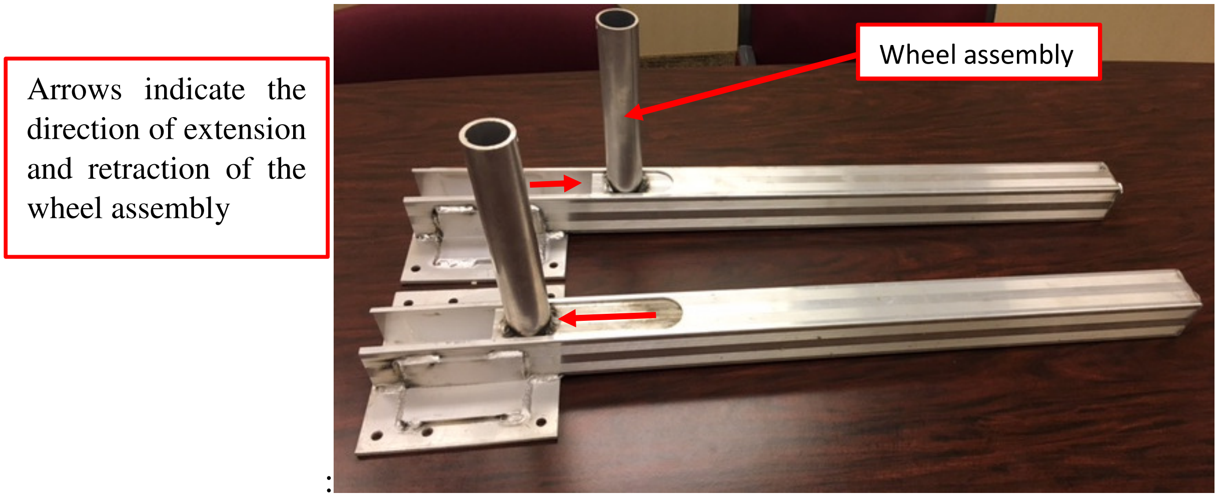
39. The accused products and processes include mounting equipment for two threaded rods connected to wheel assemblies for mounting both threaded rods to a boat lift.

40. Upon information and belief, Defendant Boats also sells wheels for the accused products.

41. Upon information and belief, the accused product offered for sale and sold by Defendants includes two threaded rods, each having a head that can be engaged to rotate the threaded rod as pictured below:


Wheel assembly
Wheel assembly
Threaded rod inside housing
Head of first threaded rod
Head of second threaded rod

Engaging each head rotates the threaded rod to raise and/or lower the wheel mount, and thus the wheel mounted thereto, the movement of the wheel mounts shown below to illustrated retracted and selected extended positions:


Arrows indicate the direction of extension and retraction of the wheel assembly
Wheel assembly

:

42. Further, a brochure of Defendants Beach King and Dan Schultz obtained in 2014 illustrates that the wheel jack as should be used including placing a socket tool onto

a head of a first threaded rod; rotating the head of the first threaded rod in a substantially horizontal plane with the tool to thereby cause substantially vertical movement of a first portion of the boat lift. True and correct pictures of the brochure are attached hereto as Exhibit D. Smarte Jack obtained a copy of the Beach King brochure shown herein, on or around March 2014.

43. On information and belief, Defendants are still selling at least one wheel jack substantially as depicted in the Beach King brochure attached hereto as Exhibit D.

44. On information and belief, in conjunction with the sale of the accused products and processes, Defendants act with a specific intent to actively induce their dealers and/or customers to directly infringe, either literally or under the doctrine of equivalents, at least one claim of the ‘906 patent.

45. Upon information and belief, Defendants intentionally and actively induce their dealers and/or customers to directly infringe claims of the ‘906 patent by advertising Smarte Jacks’ SMARTE JACK® product and process to customers, and instead selling them the accused product and process.

46. On information and belief, similar to Plaintiff’s product and process which incorporates the inventions of the ’906 patent, Defendant sells the accused product and process that comprises a set or pair of wheel jacks, including materials such as two mounting plates and fastening means for vertical installation on a dock.

47. On information and belief, Defendants also inform their dealers and/or customers that Defendants accused product and process is substantially the same as Plaintiff’s SMARTE JACK® product incorporating the inventions of the ’906 patent, all

of which encourage and direct the installation and use of the accused product and process, and any same or similar products, such that their dealers and/or customers directly infringe claims of the ‘906 patent.

48. On information and belief, Defendants knowingly engage in such inducement, at least by the time of the filing and service of the Complaint in this action, and have done so with knowledge that such activity encourages dealers and/or customers of accused product to offer to sell, sell, install, and/or use the wheel lift in a manner that directly infringes the ’906 patent.

49. For example, on information and belief, Defendants instruct their dealers and/or customers to offer to sell, sell, install, and/or use the accused product such that dealers and/or customers directly infringe at least claim 10 of the ’906 patent, as set forth in paragraphs 36-42.

50. On information and belief, and not by way of limitation, Defendants’ wheel jacks are being installed and used by dealers and/or customers to directly infringe at least claim 10 of the ’906 patent, as set forth above.

51. In conjunction with the sale of their wheel jacks, and any same or similar products, Defendants also contributorily infringe claims of the ’906 patent, including at least claim 10.

52. On information and belief, Defendants sell and offer to sell accused products including two threaded rods in housings.

53. On information and belief, the accused product and process is a material part of the patented ’906 invention. For example, the wheel jack is a material part of the invention claimed in at least claim 10 of the ’906 patent, as set forth above.

54. On information and belief, Defendants have had knowledge of the ’906 patent, and knew the accused products were especially made for, or adapted to be used, as claimed in the ’906 patent, at least by the time of the filing and service of the Complaint in this action.

55. The accused products, including the retractable wheel axle, are not staples or commodities of commerce and the housing with the retractable wheel axle have no substantial uses that do not infringe one or more claims of the ’906 patent.

56. On information and belief, Defendants’ infringement of the ’906 patent is willful because Defendants have had knowledge of the ’906 patent, and have known that the accused products, including for example the retractable axle for a wheel, infringe the ’906 patent, at least by the time of the filing and service of the Complaint in this action.

57. On information and belief, Defendants have continued to make, use, offer to sell, sell, and/or import into the United States their infringing wheel jack, including for example the retractable axle for a wheel, directly infringe or indirectly infringe, by actively inducing its dealers and/or customers to infringe the ’906 patent and/or by contributorily infringe the ’906 patent, in objective and subjective reckless disregard of the ’906 patent and the rights conferred by the ’906 patent to Smarte Jack.

58. Smarte Jack has been injured and suffered significant financial damage as a direct and proximate result of Defendants’ infringement of the ’906 patent.

59. Defendants' infringement of the '906 patent has and will continue to cause irreparable injury and damage to Smarte Jack unless and until the Court enjoins Defendants from committing further infringing acts.

60. Smarte Jack is entitled to recover damages from Defendants as a result of Defendants' wrongful acts of infringement in an amount subject to proof at trial.

COUNT II - § 43(a) OF THE LANHAM ACT (15 U.S.C. § 1125(a))

61. Smarte Jack repeats and realleges all allegations set forth above in paragraphs 1-60 as if they were stated in full and incorporated herein.

62. Smarte Jack is the owner of the SMARTE JACK® mark and has continuously used the mark in commerce in connection with hand-operated jacks for underwater use since at least as early as January 25, 2009.

63. Smarte Jack owns and holds all legal title, interest, and rights in the '403 registration.

64. Defendants did not and do not have authority or permission to use Plaintiff's SMARTE JACK® trademark in order to offer to sell, sell, or import into the United States the accused products and processes, and/or related or similar goods of which Smarte Jack is not the source of those goods.

65. Defendant Boats was and is an authorized seller of official SMARTE JACK® products and did have the authority and permission to use Plaintiff's SMARTE JACK® mark to sell official SMARTE JACK® products.

66. Defendants have had actual knowledge of Smarte Jack's SMARTE JACK® mark at least by the time of the filing and service of the Complaint.

67. On information and belief, Defendants have had knowledge of Smarte Jack's federal and common law rights in its SMARTE JACK® mark in connection with jacks, including Smarte Jack's retractable wheel for boat lifts and other structures, which is packaged and sold under the SMARTE JACK® mark, including as illustrated below:

Smarte JACK
Attachable wheels make your boat lift and mobile.
The perfect solution for lift and dock owner.
Efficiently move your boat lift or dock by yourself
Is made from aluminum
Fits on most boat lifts
Is a one-time, easy install
Is easy to level
Adjusts with wrench or cordless drill
Rolls easily on all terrains
Uses heavy duty plastic wheels
(Fits 2" or 1-7/8" I.D.)
The plastic wheels sold separately
Mounting hardware included
One pair per box

68. On information and belief, Defendant Boats has ordered for sale the above-identified Smarte Jack products, and has displayed these products in one or more of their retail locations as a retailer and/or distributor for Plaintiff as the manufacturer of the SMARTE JACK®.

69. In violation of § 43(a) of the Lanham Act, on information and belief, Defendants have misappropriated the reputation and goodwill built up in Smarte Jack's SMARTE JACK® mark and continue to infringe Smarte Jack's federal and common law trademark rights by capitalizing on and creating confusion, mistake and/or deception

between Plaintiff's SMARTE JACK® mark and Plaintiff's products and the accused products.

70. On information and belief, Defendant Boats displays Plaintiff's SMARTE JACK® product, packaged as set forth herein in paragraph 63, for sale as part of an in-store display, which also includes a SMARTE JACK® banner, and at least one SMARTE JACK® product in its Smarte Jack provided packaging.

71. On information and belief, Defendants have used the SMARTE JACK® product, process and/or associated SMARTE JACK® banner and in-store display to instead sell the accused products to customers, including at least initially confusing costumers as to the origin of the good they are directed to purchase, which are Defendants' wheel jacks (i.e., the accused products and process).

72. On information and belief, in violation of § 43(a) of the Lanham Act, Defendants have misappropriated the reputation and goodwill built up in Smarte Jack's SMARTE JACK® mark and are infringing Smarte Jack's federal and common law trademark rights by capitalizing on and/or creating confusion, mistake and/or deception or at least intentionally creating an initial interest confusion between Plaintiff's SMARTE JACK® mark and Smarte Jack products and Defendants' wheel jack.

73. On information and belief, on or about September 26, 2016, Boats sold the accused product and process to a first customer.

74. On information and belief, in April 2017 the first customer required a replacement part for the wheel jack purchased from Boats. The first customer reached out to Boats, who referred the first customer to Smarte Jack for replacement and/or remedy.

The first customer was told by Boats that his purchased wheel jack was one of Plaintiff's SAMRTE JACK® products. Plaintiff determined, based on the first customer's receipt, that the purchase was from Boats' J&K Marine retail location in Detroit Lakes, MN, and based on pictures of the inner components of the product, that the product was not a SMARTE JACK® product but instead was and is the Defendants' accused product.

75. On information and belief, in violation of § 43(a) of the Lanham Act, Defendant Boats has misappropriated the reputation and goodwill built up in Smarte Jack's SMARTE JACK® mark and are infringing Smarte Jack's federal and common law trademark rights by capitalizing on and/or creating confusion, mistake and/or deception or at least intentionally creating an initial interest confusion between Plaintiff's SMARTE JACK® mark and Smarte Jack products and Defendants' wheel jack.

76. On information and belief, on or about or about April 19, 2017, Boats sold the accused product and process to a second customer.

77. On information and belief, the second customer approached the SMARTE JACK® display in the same Detroit Lakes, MN location of Boats' J&K Marine looking for a SMARTE JACK® product. The second customer asked for a SMARTE JACK® and was instead sold Defendants' unmarked and unpackaged wheel jack after being informed the accused product and process was substantially the same in price and substantially the same product as the therein advertised SMARK JACK® product.

78. Boats has a commercial incentive in selling Defendants' own accused product based on the misappropriation of Smarte Jack's reputation and goodwill. Boats' monetary profit margin is increased by selling Defendants' products instead of Smarte

Jack's products. Boats benefits unjustly from Smarte Jack's investment in its product and advertising.

79. Boats stands to materially and financially gain by creating confusion in the marketplace and trading on the value of Plaintiff's mark in order to attract and/or initially attract and confuse customers who then purchase Defendants' wheel jack.

80. In violation of § 43(a) of the Lanham Act, Boats is infringing and will continue to infringe Smarte Jack's federal and common law trademark rights as, on information and belief, Boats is carrying out a bait and a discernable switch. Boats utilizes Plaintiff's goods and Plaintiff's mark to bait customers while the discernable switch results in the sale of Defendants' wheel jack rather than Plaintiff's.

81. On information and belief, in violation of § 43(a) of the Lanham Act, Boats is infringing and will continue to infringe Smarte Jack's federal and common law trademark rights by displaying Smarte Jack's product in close physical and competitive proximity with Defendants' product and using Plaintiff's sales materials including packaging and banners bearing Plaintiff's SMARTE JACK® mark to sell Defendants' product.

82. Smarte Jack has been injured and suffered significant financial damage as a direct and proximate result of Boats' infringement of Plaintiff's federal and common law trademark rights.

83. Boats' infringement of Plaintiff's federal and common law trademark rights has and will continue to cause irreparable injury and damage to Smarte Jack unless and until the Court enjoins Boats from committing further infringing acts.

84. Smarte Jack is entitled to recover damages from Boats as a result of Boats' wrongful acts of infringement in and an amount subject to proof at trial.

COUNT III – DECEPTIVE TRADE PRACTICES (MINN. STAT. § 325D.44)

85. Smarte Jack repeats and realleges all allegations set forth above in paragraphs 1-84 as if they were stated in full and incorporated herein.

86. Defendants have a statutory duty as set forth in Minnesota's Deceptive Trade Practices Act ("DTPA") to refrain from unfair or deceptive acts or trade practices in the sale of its wheel jacks.

87. Had Boats not engaged in the deceptive conduct described hereunder, Plaintiff would not have lost profits for the sales of its SMARTE JACK® goods diverted by Boats.

88. On information and belief, Boats misled and continues to mislead potential customers of Plaintiff by the deceptive conduct described at least in Paragraphs 71-77 and as described hereunder.

89. On information and belief, in violation of Minn. Stat. § 325D.44(1), Boats' deceptive, unconscionable, and/or fraudulent representations include passing off Defendants' wheel jack as that of Plaintiff, and constitutes unfair and deceptive acts and trade practices.

90. On information and belief, in violation of Minn. Stat. § 325D.44(2) Boats' deceptive, unconscionable, and/or fraudulent representations include causing a likelihood of confusion and/or of misunderstanding as to the source, sponsorship, approval, or

certification of Defendants' wheel jack in or by Plaintiff's business and/or with Plaintiff's goods.

91. On information and belief, in violation of Minn. Stat. § 325D.44(3), Boats' deceptive, unconscionable, and/or fraudulent representations include causing a likelihood of confusion and/or of misunderstanding as to affiliation, connection, or association with, or certification by Plaintiff of Defendants' wheel jack.

92. On information and belief, in violation of Minn. Stat. § 325D.44(13), Boats' deceptive, unconscionable, and/or fraudulent representations include engaging in any other conduct which similarly creates a likelihood of confusion between Plaintiff's SMARTE JACK® mark and its wheel jacks sold in connection therewith and Defendants' wheel jack.

93. Smarte Jack has been injured and suffered significant financial damage as a direct and proximate result of Boats' violation of the Minnesota DTPA.

94. Boats' violation of the Minnesota DTPA has and will continue to cause irreparable injury and damage to Smarte Jack unless and until the Court enjoins Boats' from committing further infringing acts.

REQUEST FOR RELIEF

Smarte Jack respectfully requests the following relief:

A. A judgment that Defendants have infringed and are infringing one or more claims of the '906 patent, and are liable to Smarte Jack for damages caused by such infringement;

B. An award of damages, including lost profits, or in the alternative, not less than a reasonable royalty, including pre-judgment and post-judgment interest and costs, in an amount adequate to compensate Smarte Jack for Defendants' infringement of the '906 patent;

C. A judgment that Defendants' infringement of the '906 patent is willful and that damages shall be increased under 35 U.S.C. § 284 to three times the amount found or measured;

D. An order permanently enjoining Defendants from infringing the '906 patent;

E. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as an ongoing royalty;

F. A post-judgment equitable accounting of damages owed by Defendants for the period of infringement of the '906 patent following the period of damages established at trial;

G. A finding that this case is "exceptional" and an award of attorneys' fees, expenses, and costs incurred in this action, pursuant to 35 U.S.C. § 285;

H. A judgment that Boats has infringed and is infringing Plaintiff's SMARTE JACK® trademark, and is liable to Smarte Jack for damages caused by such infringement;

I. An award of damages, including lost profits, or in the alternative, not less than a reasonable royalty, including pre-judgment and post-judgment interest and costs, in an amount adequate to compensate Smarte Jack for Boats' infringement of the Plaintiff's SMARTE JACK® trademark;

J. An order permanently enjoining Boats from infringing the SMARTE JACK® trademark;

i. the order permanently enjoining Boats from offering for sale and/or selling Defendants' products in close association and/or proximity with Plaintiff's mark and/or product;

ii. the order permanently enjoining Boats from offering for sale and/or selling Defendants' products by creating confusion, mistake and/or deception as to Plaintiff as the source of Defendants' products; and

iii. the order permanently enjoining Boats from continuing the deceptive trade practices;

K. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as an ongoing royalty;

L. A post-judgment equitable accounting of damages owed by Boats for the period of infringement of the SMARTE JACK® trademark following the period of damages established at trial;

M. A finding that this case is "exceptional" and an award of attorneys' fees, expenses, and costs incurred in this action, pursuant to 17 U.S.C. § 1117;

N. Any other and further relief at law or in equity as the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment to the Constitution of the United States, Plaintiffs hereby demand a trial by jury of all issues triable in the above action.

Dated: May 4, 2017

Respectfully Submitted,

By: s/ Austen Zuege

Austen Zuege (MN # 330,267)
Amanda Prose (MN # 392,688)
WESTMAN, CHAMPLIN & KOEHLER, P.A.
900 Second Avenue South
Suite 1400
Minneapolis, Minnesota 55402
Telephone: 612-334-3222
Fax: 612-334-3312
E-mail: azuege@wck.com
E-mail: aprose@wck.com

ATTORNEYS FOR PLAINTIFF SMARTE JACK, INC.